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11 Defendants

12 **HIDDEN EMPIRE HOLDINGS, LLC.,  
13 HYPER ENGINE, LLC AND DEON  
14 TAYLOR AND THIRD-PARTY  
15 DEFENDANT ROXANNE TAYLOR**

16  
17 UNITED STATES DISTRICT COURT  
18 CENTRAL DISTRICT OF CALIFORNIA

19 HIDDEN EMPIRE HOLDINGS, LLC; a  
20 Delaware limited liability company;  
21 HYPER ENGINE, LLC; a California  
22 limited liability company; DEON  
23 TAYLOR, an individual,

24 Plaintiffs,

25 v.

26 DARRICK ANGELONE, an individual;  
27 AONE CREATIVE LLC, formerly  
known as AONE ENTERTAINMENT  
LLC, a Florida limited liability  
company; ON CHAIN INNOVATIONS  
LLC, a Florida limited liability  
company,

28 Defendants.

29 DARRICK ANGELONE, an individual;  
30 AONE CREATIVE LLC, formerly  
known as AONE ENTERTAINMENT  
LLC, a Florida limited liability  
company; ON CHAIN INNOVATIONS  
LLC, a Florida limited liability company

31 Counterclaimants,

32 **CASE NO. 2:22-cv-06515-MWF-AGR**

33 Judge: Hon. Michael W. Fitzgerald

34 **PLAINTIFFS HIDDEN EMPIRE  
35 HOLDINGS, LLC, HYPER ENGINE,  
36 LLC, AND DEON TAYLOR'S AND  
37 THIRD-PARTY DEFENDANT  
38 ROXANNE TAYLOR'S  
39 OPPOSITION TO DEFENDANTS'  
40 EX PARTE APPLICATION FOR (1)  
41 AN ORDER ALLOWING  
42 DESIGNATION OF AN  
43 ALTERNATE REBUTTAL EXPERT,  
44 AND (2) AN ORDER PERMITTING  
45 LATE FILING OF DEFENDANTS'  
46 EXPERT RICK WATTS'  
47 REBUTTAL REPORT**

48 Complaint Filed: September 12, 2022  
49 Trial Date: December 10, 2024

1 HIDDEN EMPIRE HOLDINGS, LLC; a  
2 Delaware limited liability company;  
3 HYPER ENGINE, LLC; a California  
4 limited liability company; DEON  
TAYLOR, an individual,

5 Counterclaim  
Defendants,

6 DARRICK ANGELONE, an individual;  
7 AONE CREATIVE LLC, formerly  
known as AONE ENTERTAINMENT  
8 LLC, a Florida limited liability  
company; ON CHAIN INNOVATIONS  
9 LLC, a Florida limited liability  
company,

10 Third-Party Plaintiffs,

11 v.

12 ROXANNE TAYLOR, an individual,

13 Third-Party Defendant



1        **I. Introduction.**

2           Aside from the fact that there is no “emergency” warranting an *ex parte*  
 3 application, Defendants Darrick Angelone, AOne Creative, LLC, and On Chain  
 4 Innovations, LLC (collectively, “Defendants”) did not comply with their expert  
 5 discovery obligations under the Federal Rules of Civil Procedure (“Fed. R. Civ. P.”)  
 6 Rule 26 and this Court’s orders in multiple ways. In their initial expert designation on  
 7 January 22, 2024, Defendants designated George Edwards (“Edwards”) but provided  
 8 no written report, in violation of Fed. R. Civ. P. 26(a). Pursuant to the Court’s  
 9 Scheduling Order, rebuttal designations were due on February 20, 2024. Despite the  
 10 fact that Defendants had Plaintiff Hidden Empire Holdings, LLC’s, Hyper Engine,  
 11 LLC’s, Deon Taylor’s and Cross-Defendant Roxanne Taylor’s (collectively,  
 12 “Plaintiffs”) expert reports for over a month, on the day before rebuttal designations  
 13 were due, Defendants requested Plaintiffs agree to an extension of time to February  
 14 26, 2024 for Defendants to serve their rebuttal expert designation. At the time of  
 15 Defendants’ request, they made no mention of the fact that Edwards would not be the  
 16 designated expert. When the new deadline arrived, Defendants served no designation  
 17 at all. Instead, they submitted an unsigned, draft report from a different expert, Rick  
 18 Watts (“Watts”), as an attachment to counsel’s declaration filed as part of an  
 19 opposition to Plaintiffs’ pending sanctions motion. By serving an unsigned and  
 20 incomplete draft report, Defendants again violated Fed. R. Civ. P. 26(a). Plaintiffs  
 21 did not serve a rebuttal expert designation for Watts until February 27, 2024, which  
 22 was in violation of both the Court’s Scheduling Order and the parties’ informal  
 23 agreement. As a result, Watts’ designation was untimely and should be stricken.

24           Now – nearly 2.5 weeks after the Court ordered deadline lapsed and 1.5 weeks  
 25 after their informal extension lapsed – Defendants seek extensions and relief under  
 26 Rule 26(a)(2)(B), which under the law, cannot be granted because there is no good  
 27 cause to retroactively modify the Scheduling Order to excuse Defendants’ past

1 violations.<sup>1</sup> Moreover, Defendants are fully aware of the requirement that they seek  
 2 the Court's approval to move relevant deadlines before those deadlines expired, but  
 3 they failed to do so this time.<sup>2</sup> Their present situation is the result of their own dilatory  
 4 conduct and does not warrant the relief they seek.

5 In any event, the expert discovery cutoff in this case is not until September 23,  
 6 2024, so there are no exigent circumstances that warrant Defendants' filing an *ex*  
 7 *parte* application. Defendants should raise their request with the Court by filing a  
 8 noticed motion.

9 For the foregoing reasons, and the reasons below, Defendants' application  
 10 should be denied.

## 11 II. **Statement of Facts.**

12 On November 8, 2023, the Parties filed a Joint Stipulation To Continue  
 13 Designation Of Expert Witnesses and Discovery Cutoffs. (**Declaration of Lawrence**  
 14 **Hinkle (“Hinkle Decl.”), ¶ 4; Dkt. 105.**) In relevant part, the stipulation sought to  
 15 extend the deadline for the Parties to make their initial designation of expert witnesses  
 16 to January 22, 2024 and their rebuttal disclosures of expert witnesses to February 20,  
 17 2024. (*Id.*) On November 9, 2023, the Court granted the Parties' Joint Stipulation.  
 18 (Hinkle Decl., ¶ 4; **Dkt. 106.**) Subsequently, on February 7, 2024, the Parties filed an  
 19 additional Joint Stipulation to Continue Trial and Pretrial Dates. (Hinkle Decl., ¶ 9;  
 20 **Dkt. 113.**) The parties met and conferred over the new joint deadlines and at no time  
 21 did Defendants ask to move the deadlines for expert designations, so among other  
 22 matters, the expert rebuttal disclosure deadline stayed the same as in the Court's prior  
 23 Scheduling Order. (*Id.*) On February 9, 2024, the Court granted the Parties' additional

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24  
 25 <sup>1</sup> Defendants' Initial Expert Witness Disclosures, untimely Rebuttal Expert Witness Disclosure, and belated reports by  
 26 Watts are currently the subject of Plaintiffs' Objection and Request to Strike Defendants' Initial Disclosure, Rebuttal  
 27 Expert Witness Disclosure, and Corresponding Reports of Rick Watts. (**Dkt. 128.**)  
 28 <sup>2</sup> Their awareness of the requirement is evidenced by their filing of an *ex parte* application to continue the hearing date  
 on Plaintiffs' pending sanctions motion so they would have more time to prepare their opposition. (**Dkt. 114.**)

1 stipulated request to continue the trial dates. (Hinkle Decl., ¶ 11; Dkt. 116.)  
 2 Accordingly, Defendants' deadline to serve expert rebuttal disclosures was February  
 3 20, 2024.

4 Consistent with the Parties' first Joint Stipulation (and the Court's November  
 5 9, 2023 Order), on January 22, 2024, Plaintiffs made their initial expert witness  
 6 disclosures. (Hinkle Decl., ¶ 5; Dkt. 107.) Also on January 22, 2024, Defendants  
 7 served their initial Expert Witness Disclosure, designating Edwards as their computer  
 8 science/technology expert. (Hinkle Decl., ¶ 6; Dkt. 108.) However, Defendants'  
 9 disclosure did not contain a report by Edwards. (*Id.*) On January 23, 2024, Defendants  
 10 served a "Supplemental" Expert Witness Disclosure that purported to add a new  
 11 damages expert, David Sack, CPA ("Sack"), but that Supplemental Designation also  
 12 did not contain reports for either Edwards or Sack. (Hinkle Decl., ¶ 7; Dkt. 109.)  
 13 Defendants ultimately withdrew their designation of Sack.

14 On February 5, 2024, Plaintiffs filed their Motion for an Order to Show Cause  
 15 Why Sanctions Should Not Be Imposed Against Defendants For (1) Violating The  
 16 Preliminary Injunction [Contempt] and (2) Spoliation Of Evidence (the "Sanctions  
 17 Motion"). (Hinkle Decl., ¶ 8; Dkt. 110-112.) Plaintiffs noticed the Sanctions Motion  
 18 for March 4, 2024. (*Id.*)

19 On February 8, 2024, Defendants filed an *ex parte* application seeking to  
 20 continue the hearing date on Plaintiffs' Motion from March 4, 2024 to March 18,  
 21 2024. (Hinkle Decl., ¶ 10; Dkt. 114.) Later that day, the Court granted Defendants'  
 22 *ex parte* application. (Hinkle Decl., ¶ 10; Dkt. 115.) Accordingly, Defendants'  
 23 deadline to file their Opposition to the Sanctions Motion was extended to February  
 24 26, 2024. (*Id.*)

25 On February 19, 2024, more than 3.5 months *after* the joint request to extend  
 26 the rebuttal expert witness disclosure deadline, and the day before the Rebuttal Expert  
 27 designation deadline, Defendants requested, and Plaintiffs granted, a further extension

1 from February 20th to February 26, 2024 for Defendants to make their rebuttal expert  
 2 witness disclosure (Defendants did not seek an Order from the Court regarding this  
 3 extension). (Hinkle Decl., ¶ 12; Exhibit 69.) In that correspondence, Plaintiffs'  
 4 counsel explained that they could not offer a longer extension because Edwards'  
 5 rebuttal opinions were relevant to the pending sanctions motion and the deadline for  
 6 Defendants' opposition to that motion was February 26, 2024. (Id.) Plaintiffs, under  
 7 the impression that Defendants would be providing a rebuttal report by Edwards,  
 8 agreed to the extension. (Id.) Defendants did nothing to correct Plaintiffs' belief.

9 On February 22, 2024, four days before the rebuttal designation and Edwards'  
 10 report were due, defense counsel e-mailed Plaintiffs' counsel and advised that  
 11 Defendants were switching experts from Edwards to a new person, Watts. (Hinkle  
 12 Decl., ¶ 13; Exhibit 70.) When Plaintiffs' counsel asked defense counsel to explain  
 13 the reasons for the switch at this late date, defense counsel provided three different  
 14 and inconsistent explanations. Plaintiffs did not stipulate to the belated switch from  
 15 Edwards to Watts. (Id.)

16 On February 26, 2024, Defendants filed their Opposition to Plaintiffs'  
 17 Sanctions Motion, which contained an unsigned, draft report from Watts that defense  
 18 counsel attached to the Declaration of Sandra Calin filed in Support of Defendants'  
 19 Opposition. (Hinkle Decl., ¶ 14; Dkt. 120.) On February 27, 2027, after the stipulated  
 20 deadline for rebuttal disclosures had already passed, Defendants filed and served a  
 21 Rebuttal Designation naming Watts as their expert. (Hinkle Decl., ¶ 15; Dkt. 123.)  
 22 The belated Rebuttal Designation contained a signed report from Watts. (Id.)

23 **III. Argument.**

24 ***a. There Is No Urgency for Defendants' Ex Parte Application.***

25 Defendants do not identify a single exigent circumstance warranting their *ex*  
 26 *parte* application. Under the current Scheduling Order, expert discovery in this matter  
 27 does not close until September 23, 2024 - another 6.5 months. (Dkt. 116.) Defendants

1 have ample time to file a noticed motion in order to seek the relief sought by their *ex*  
 2 *parte* application.

3       **b. There Is No Good Cause for the Relief Defendants Seek.**

4       Once the deadlines to disclose experts have passed, a request by a party to  
 5 extend the deadlines to do so is construed as a motion to modify the Scheduling Order  
 6 under Federal Rule of Civil Procedure, Rule 16. (*See Johnson v. Mammoth*  
 7 *Recreations, Inc.*, 975 F.2d 604, 608- 99 (9th Cir. 1992); *see also In re Northrop*  
 8 *Grumman Corp. ERISA Litig.*, CV 06- 6213-AB (JCx), 2016 WL 6826171, at \*2  
 9 (C.D. Cal. April 7, 2016) [treating motion to substitute expert as Rule 16 motion  
 10 because motion “effectively asks the Court to modify the prior expert disclosure  
 11 deadline . . . and allow them to name a new [] expert...and noting that modifying the  
 12 scheduling order will result in the plaintiff complying with Rule 26 and thus not  
 13 trigger sanctions under Rule 37], *Deckers Outdoor Corp. v. Romeo & Juliette, Inc.*,  
 14 CV 15-2812-ODW (PLAx), 2017 WL 11629880, at \*1 (C.D. Cal. Aug. 3, 2017)  
 15 [“Because Defendants seek to designate an expert beyond the deadline permitted in  
 16 the Court’s Scheduling Order, Defendants must show ‘good cause’ for not doing so  
 17 earlier”], *Bagwell v. CBS Broad., Inc.*, CV 19-8423-DSF (ASx), 2021 WL 9145409,  
 18 at \*1-\*2 (C.D. Cal. Oct. 19, 2021) (treating motion to substitute expert as motion to  
 19 modify scheduling order under Rule 16).)

20       Pursuant to Rule 16, a scheduling order “may be modified only for good cause  
 21 and with the judge’s consent.” (Fed. R. Civ. P. 16(b)(4); *see also* Fed. R. Civ. P.  
 22 6(b)(1)(A) (requiring good cause to extend the time to accomplish an act that must be  
 23 done within a specified time).) The Rule 16 “good cause” standard “primarily  
 24 considers the diligence of the party seeking the amendment.” (*Coleman v. Quaker*  
 25 *Oats Co.*, 232 F.3d 1271, 1294 (9th Cir. 2000); *see also Johnson*, 975 F.2d at 609  
 26 (“Although the existence or degree of prejudice to the party opposing the modification  
 27 might supply additional reasons to deny a motion, the focus of the inquiry is upon the



1 moving party's reasons for seeking modification . . . If that party was not diligent, the  
 2 inquiry should end".)

3 Here, there are at least two reasons why the relief sought should be denied.  
 4 First, Defendants were dilatory in seeking relief. Defendants' deadline to designate  
 5 their rebuttal witness lapsed more than 2.5 weeks prior to bringing the instant *ex parte*  
 6 application. By their own admission, Defendants knew they wanted to switch experts  
 7 no later than February 22, 2024. (***Ex Parte Application***, p. 2:26-3:1 and 3:26-28.)  
 8 Even with Plaintiffs' informal extension of the deadline to designate rebuttal experts  
 9 to February 26th, Defendants' *ex parte* application was not made until 1.5 weeks *after*  
 10 the rebuttal designation deadline had lapsed and Defendants knew Plaintiffs would  
 11 not stipulate to a further extension (because Plaintiffs could not give the direct  
 12 relevance of expert opinions to its sanctions motion). Such unexcused delay by  
 13 Defendants falls woefully short of diligence.

14 Moreover, for at least one-month, Defendants knew of "circumstances  
 15 unforeseen to Defendants" and yet, did nothing to seek the Court's modification of its  
 16 scheduling order. Tellingly, Defendants fail to state the date it became aware of the  
 17 "unforeseen" circumstances or identify the nature of any of the circumstances  
 18 purportedly necessitating the switch. (***Ex Parte Application***, p. 3:10-13.) Defendants  
 19 must have known of the circumstances when they served and filed their non-  
 20 compliant Rule 26(a) initial designation of Edwards without any accompanying  
 21 report. Yet, Defendants did nothing to seek relief from the Court.

22 Because Defendants waited more than one month in seeking an extension and  
 23 not once sought a Court approved extension of the rebuttal designation deadline,  
 24 Defendants were dilatory and accordingly, there is no good cause to support their  
 25 request for an extension, i.e., a modification of the Court's Scheduling Order.

26 Second, Defendants failed to seek a modification of the Court's February 9,  
 27 2024 Scheduling Order. The only mechanism by which Defendants' late rebuttal

1 witness disclosures and service or late reports can be made at this juncture is through  
2 the modification of the Court's February 9, 2024 Scheduling Order. This is yet another  
3 independent reason why Defendants' *ex parte* application should be denied.

4 **IV. Conclusion.**

5 Based on the foregoing, Plaintiffs respectfully request this Court deny  
6 Defendants' *ex parte* application.

7 Dated: March 5, 2024

**SANDERS ROBERTS LLP**

*Lawrence F. Hinkle*

8 By:

9 Lawrence Hinkle, Esq.  
10 Stephanie Jones Nojima, Esq.  
11 Attorneys for Plaintiffs and Counter-Defendants,  
12 **HIDDEN EMPIRE HOLDINGS, LLC.,**  
**HYPER ENGINE, LLC AND DEON**  
**TAYLOR AND THIRD-PARTY**  
**DEFENDANT ROXANNE TAYLOR**



1 PROOF OF SERVICE

2 (CODE CIV. PROC. § 1013A(3))

3 STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

4 I am employed in the County of Los Angeles, State of California. I am over the age of 18  
years and am not a party to the within action; my business address is 1055 West 7th Street, Los  
Angeles, CA 90017. My electronic service address is esanders@sandersroberts.com.

5 On March 5, 2024, I served the following document(s) described as **PLAINTIFFS**  
6 **HIDDEN EMPIRE HOLDINGS, LLC, HYPER ENGINE, LLC, AND DEON TAYLOR'S**  
7 **AND THIRD-PARTY DEFENDANT ROXANNE TAYLOR'S OPPOSITION TO**  
8 **DEFENDANTS' EX PARTE APPLICATION FOR (1) AN ORDER ALLOWING**  
9 **DESIGNATION OF AN ALTERNATE REBUTTAL EXPERT, AND (2) AN ORDER**  
**PERMITTING LATE FILING OF DEFENDANTS' EXPERT RICK WATTS' REBUTTAL**  
**REPORT** on the interested parties in this action as follows:

10 **JEFFREY S. KRAMER, ESQ.**

11 **SANDRA CALIN, ESQ.**

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34  **VIA ELECTRONIC MAIL** I caused the documents to be transmitted electronically  
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36 the attached service list using the e-mail address(es) shown I did not receive, within a  
37 reasonable time after transmission, any email or other indication that the transmission(s)  
38 were unsuccessful.

39 I declare under penalty of perjury under the laws of the State of California that the foregoing  
40 is true and correct.

41 Executed on March 5, 2024, at Los Angeles, California.

42 Elizabeth Sanders

43 \_\_\_\_\_  
44 (Type or print name)

45   
46 (Signature)